

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LUKE LEFEVER,

Plaintiff,

vs.

IVAN CASTELLANOS, Dawson County
Deputy, in his official and individual
capacities; JEROME KRAMER, Lincoln
County Sheriff, in his official and individual
capacities; DEPUTY ROLAND KRAMER,
Chief Deputy, in his official and individual
capacities; BRETT SCHMIDT, Deputy, in
his official and individual capacities;
CARLOS TREVINO, Nebraska State Patrol
Trooper, in his individual capacity;
ELWOOD, Nebraska State Patrol Trooper
Sgt., in his individual capacity; COUNTY
OF DAWSON, NEBRASKA, and LINCOLN
COUNTY,

Defendants.

4:20CV3066

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Notice of Appeal, [Filing No. 145](#), and Motion for Leave to Appeal In Forma Pauperis ("IFP"), [Filing No. 148](#); Motion for Appointment of Counsel, [Filing No. 146](#); and Motion for Clarification, [Filing No. 152](#). The Motion for Leave to Appeal IFP is granted, and the remaining motions are denied.

I. Motion for Leave to Appeal IFP, [Filing No. 148](#)

Plaintiff was permitted to proceed in forma pauperis in this action on June 15, 2020, [Filing No. 6](#), and he may now proceed in forma pauperis on appeal without further authorization. [Fed. R. App. P. 24\(a\)\(3\)](#).

The Prison Litigation Reform Act ("PLRA") requires prisoner plaintiffs to pay the full amount of the Court's \$505.00 appellate filing fee by making monthly payments to the

Court, even if the prisoner is proceeding in forma pauperis. 28 U.S.C. § 1915(b). The PLRA “makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal.” *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951, 952 (D. Neb. 2001) (citing *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). The appellate filing fee is assessed when the district court receives the prisoner’s notice of appeal. *Henderson v. Norris*, 129 F.3d 481, 485 (8th Cir. 1997).

Plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of Plaintiff’s average monthly account balance or average monthly deposits for the six months preceding the filing of the notice of appeal. See 28 U.S.C. § 1915(b)(1). Accordingly, based on the records before the Court, the initial partial filing fee is \$1.40, based on average monthly account balance of \$7.00. See [Filing No. 154](#).

In addition to the initial partial filing fee, Plaintiff must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the Court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Therefore, after payment in full of the initial partial filing fee, the remaining installments shall be collected pursuant to this procedure.

II. Motion to Appoint Counsel on Appeal, [Filing No. 146](#)

Plaintiff has filed a motion seeking the appointment of counsel on appeal. [Filing No. 146](#). The Eighth Circuit Court of Appeals appoints counsel for appeals, and Plaintiff’s

motion is clearly addressed to that Court. Therefore, this Court will direct the Clerk of the Court to terminate the motion event and transmit the motion to the Eighth Circuit Court of Appeals along with Petitioner's Notice of Appeal.

III. Motion for Clarification, [Filing No. 152](#)

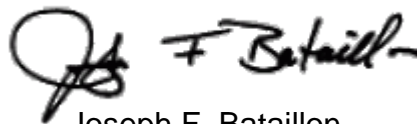
Plaintiff submits a Motion for Clarification that asks for clarification on why certain documents were not filed with his Notice of Appeal. Those documents include the Notice of Appeal, a cover page accompanying the Notice of Appeal and his request for appointment of counsel, a handwritten note to the Clerk of Court, and a copy of the manila envelope Plaintiff used to mail the documents. [Filing No. 152 at 1](#). However, the Notice of Appeal at [Filing No. 145](#) includes the cover page, a handwritten note, and a copy of the manila envelope. [Filing No. 145 at 2-4](#). Moreover, Plaintiff's Motion to Appoint Counsel was docketed at [Filing No. 146](#). Accordingly, all documents appear in the record and further clarification is not necessary.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Leave to Proceed in Forma Pauperis on Appeal, [Filing No. 148](#), is granted;
2. Plaintiff shall pay an initial partial filing fee of \$1.40 within 30 days unless an enlargement of time is granted in response to a written motion;
3. The Clerk of the Court is directed to terminate the motion event for Plaintiff's Motion for Appointment of Counsel, [Filing No. 146](#), and transmit [Filing No. 146](#) to the Eighth Circuit Court of Appeals as a supplement to Plaintiff's Notice of Appeal; and
4. Plaintiff's Motion for Clarification, [Filing No. 152](#), is denied.

Dated this 19th day of January, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon". The signature is stylized with a large, circular initial "J" and a long horizontal stroke at the end.

Joseph F. Bataillon
Senior United States District Judge